

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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 In the Matter of)
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Joint Application by BellSouth Corporation,)
 BellSouth Telecommunications, Inc.,)
 and BellSouth Long Distance, Inc. for)
 Provision of In-Region, InterLATA Services)
 in Georgia and Louisiana)
 _____)

CC Docket No. 01-277

COMMENTS OF DIRECTV BROADBAND, INC.

DIRECTV Broadband, Inc. ("DIRECTV Broadband") submits these comments concerning the above-captioned Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively referred to hereinafter as "BellSouth") for Provision of In-Region, InterLATA Services in Georgia and Louisiana (the "Application"). DIRECTV Broadband is a leading nationwide provider of high-speed Internet access service and other DSL-based advanced telecommunications services. DIRECTV Broadband is a wholesale purchaser of DSL tone from QWEST, BellSouth, SBC and Verizon.

For the reasons stated below, it would not serve the public interest to grant the Application absent commitments from BellSouth that it will provide interLATA ATM transport services to ISPs on reasonable terms and conditions.

I. DIRECTV Broadband's Provision of High Speed Internet Access Service

DIRECTV Broadband serves primarily residential subscribers across the nation by purchasing wholesale digital subscriber line ("DSL") service from incumbent local exchange carriers ("ILECs"), and where available, from competitive local exchange carriers ("CLECs"). Typically, the DSL service will extend from the end user customer to the ILEC central office

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serving the end user. From there, the ILEC's ATM network carries the end user's data traffic to, in the case of BOCs, a connection point that DIRECTV Broadband establishes in each LATA. The communications are then carried from that point to DIRECTV Broadband's nationwide backbone network and the Internet by services purchased from interexchange carriers ("IXCs"). By means of these arrangements, DIRECTV Broadband is able to provide quality, innovative high speed Internet access services to consumers. These services include high-speed Internet access, e-mail, firewall, virus protection and spam protection services, plus various other digital services expected to be deployed in the near future.

However, these arrangements and restrictions on ILEC interLATA traffic impose a number of very significant costs and inefficiencies on providers purchase last-mile connectivity from ILECs such as BellSouth. For example, the circuits obtained from IXCs extending from DIRECTV Broadband's backbone into each LATA are typically expensive DS3 links. This arrangement results in increased charges to consumers and in some cases prevents service to consumers when DIRECTV Broadband does not have sufficient traffic in a LATA to justify a DS3 connection to the LATA. Particularly in less densely populated areas, the inefficiencies can make it uneconomical to provide service.

It would be far more efficient and make service more widely available to consumers in areas outside metropolitan centers if, instead of being required by each BOC to extend facilities into each LATA, DIRECTV Broadband could obtain regionwide or at least multi-state, ATM transport services. ATM networks were developed precisely because they combine the efficiencies of packet-switching with the ability to use circuit switched network transmission facilities. In fact, these efficiencies are such that DIRECTV Broadband estimates that the additional cost to a BOC of extending ATM networks across LATA boundaries should not result in significant additional charges to providers such as DIRECTV Broadband, beyond the charges

for last mile connectivity that BOCs currently provide plus the charge for the circuit into each region where the BOC gains long distance authority. Any increase in cost from carrying traffic within a region to a connection point for the DIRECTV Broadband network would be far less than charges for the DS3 transport services that DIRECTV Broadband currently incurs because of the unavailability of regionwide ATM transport services.

II. Improved Information Access is in the Public Interest

BellSouth seeks in its Application authorization to provide interLATA services originating in the States of Georgia and Louisiana. The “competitive checklist” of Section 271 of the Telecommunications Act of 1996 was designed primarily to determine whether a Bell operating company provides adequate access and interconnection to other telecommunications carriers. As BellSouth acknowledges in its Application,¹ the Commission must also determine whether interLATA entry “is consistent with the public interest, convenience and necessity.”²

In this connection, a key purpose of Section 271 is to bring to consumers the increased service choices and lower prices that competition can bring. Indeed, BellSouth in its application describes in expansive terms the benefits to the public that it expects from a grant of its application.³ However, DIRECTV Broadband has been disappointed that some other BOCs, after obtaining interLATA approval, have not met the challenge and opportunity envisioned in Section 271 in that they have failed to extend their existing ATM transport services in ways that could permit DIRECTV Broadband other ISPs to take full advantage of the efficiencies of this technology and the benefits of their entry into long distance. For example, SBC has not extended their ATM networks and ATM transport offerings and has failed to provide DIRECTV Broadband this service on an interLATA basis in Texas. Doing so would serve the public

¹ App. at 149.

² 47 USC Section 271(d)(3)(C).

³ App. at 149 et seq.

interest, because DIRECTV Broadband and other ISPs, in turn, could provide service to consumers most efficiently and at the most affordable prices.

DIRECTV Broadband respectfully requests that the Commission determine that, apart from other possible deficiencies in the application, that it would not be in the public interest to grant the above-captioned application absent some assurances and commitments from BellSouth that it will offer interLATA ATM transport services to ISPs on reasonable terms and conditions within a short time after obtaining the grant.⁴

III. BellSouth Has Failed To Provide Adequate Assurance of Non-Discriminatory Provisioning to ISPs

In its Application, BellSouth describes both its Wholesale DSL Service⁵ and its own retail information service.⁶ BellSouth explains that its tariffed DSL services are “designed to be a wholesale input into a larger product sold by ISPs and carriers, not an end-user offering.”⁷ BellSouth describes its own retail information service offerings, and notes its continuing obligation to offer competing ISPs non-discriminatory access to the telecommunications services also used by the BellSouth to provide its own retail information services.

Obviously, non-discriminatory access by ISPs to essential network services is bedrock precondition to any grant of interLATA approval. In the present application, however, BellSouth provides little meaningful information concerning its current or future plans for providing information services or how, in light of those plans, it intends to comply with nondiscrimination

⁴ If, following grant this Application, any BellSouth entity, including but not limited to BSLD, provides or obtains telecommunications switching or transport facilities that cross LATA boundaries, DIRECTV Broadband is interested in obtaining such facilities on non-discriminatory terms and conditions. It should not matter where (in terms of its own separate affiliates) BellSouth chooses to place such functionality. If functions currently provided by BellSouth Telecommunications or any BellSouth ILEC entity are transferred to BSLD or any newly created affiliate, ISPs should be able to obtain from BellSouth essential telecommunications facilities for the distribution of broadband services on reasonable terms and conditions.

⁵ App. at 145.

⁶ App. at 147.

⁷ *Id.*

safeguards. In footnote 18 to the Application,⁸ BellSouth states that it intends to offer in-region, interLATA services in Georgia and Louisiana through its subsidiary BellSouth Long Distance, Inc. (“BSLD”), and operate this affiliate in accordance with the requirements of Section 272 of the Act. In his Affidavit, Pavan Bhalla, the Vice President and Chief Financial Officer of BSLD states that “BSLD has no *immediate* plans to provide interLATA information services” (emphasis added) but also states that BellSouth Corporation may from time to time reorganize, merge or otherwise change the form of BSLD or create additional interexchange subsidiaries.” Other than this statement, the Application does not shed further light on BellSouth’s proposals about, and to, information service providers.

Therefore, BellSouth should be required to clarify what its plans are for telecommunication services for information service providers prior to any grant of the Application. In particular, BellSouth should not be permitted to configure its network, transfer facilities, or restructure its organization in ways that would limit information service competition. Section 706 of the Telecommunications Act of 1996 requires the Commission to encourage the deployment, on a reasonable and timely basis, of advanced telecommunications to all Americans. DIRECTV Broadband is informed and believes that BellSouth is considering fundamental changes to DSL architecture that would severely limit the existing capability of DSL circuits to support advanced services, such as voice over IP. DIRECTV Broadband requests that the Commission obtain more information and commitments from BellSouth regarding its own retail plans for information services, and its plans to continue providing essential DSL telecommunications facilities necessary to provide those services. As part of its public interest inquiry in this proceeding, the Commission should make sure that BellSouth identifies any fundamental changes to DSL connectivity sold to information service providers

⁸ App. at 8.

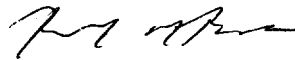
and satisfy the Commission that these changes will not prevent the continued deployment of advanced telecommunications services on a reasonable and efficient basis to American consumers.

IV. Conclusion

For these reasons, the Commission should not grant the Application, in addition to other possible deficiencies, absent commitments from BellSouth to provide regional ATM services to ISPs on reasonable terms and conditions. The Commission should also obtain complete information from BellSouth concerning BellSouth's plans for provision of information services and how it plans to comply with nondiscrimination safeguards in light of them.

Respectfully Submitted,

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Date: October 22, 2001

CERTIFICATE OF SERVICE

I, Ivonne J. Diaz, hereby certify that on this 22nd day of October 2001, copies of the foregoing Comments of DIRECTV Broadband, Inc. were delivered by hand* or first-class mail to the following parties:

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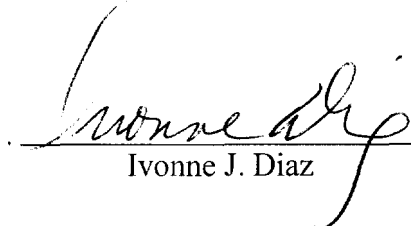
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